

FILED
ASHEVILLE, N. C.

AUG 10 2006

U.S. DISTRICT COURT
W. DIST. OF N. C.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

1:06mc 163

IN RE: REAL PROPERTY LOCATED AT)
130 HIGH ROCK ACRES DRIVE, BLACK)
MOUNTAIN, NORTH CAROLINA,)
PARCEL IDENTIFICATION NUMBER)
0628.00-14-7646, AND MORE)
PARTICULARLY DESCRIBED IN A DEED)
RECORDED AT BOOK 2881, PAGE 660,)
IN THE BUNCOMBE COUNTY, NORTH)
CAROLINA, LAND REGISTRY)

**ORDER
AND LIS PENDENS**

FILE IN GRANTOR INDEX UNDER:

SEAN HURLEY

WHEREAS, the United States of America, by and through Cody R. Muse, detective, Buncombe County, North Carolina, Sheriff's Office, has presented an affidavit to the Court alleging that the above-captioned property facilitated the distribution and dispensing of controlled substances in violation of 21 U.S.C. § 801 *et seq.*; and,

WHEREAS, the Court, having reviewed the affidavit, finds that there is probable cause to believe that the property facilitated the distribution and dispensing of controlled substances in violation of 21 U.S.C. § 801 *et seq.*; and,

WHEREAS, upon this finding of probable cause, the property may be subject to civil or criminal forfeiture to the United States pursuant to 21 U.S.C. §§ 881 and 853, and the government is entitled to record a *lis pendens* to give public notice of the government's forfeiture interest and potential civil and/or criminal forfeiture claim against the property; and,

THEREFORE, the United States is directed forthwith to file this Order and Lis Pendens with the appropriate state or local public depository to prevent the flight or transfer of the property so that the United States may initiate action to adjudicate forfeiture of the property; and,

ALL WHO READ THIS ORDER AND LIS PENDENS TAKE NOTICE that the property is subject to forfeiture to the United States in a present or future criminal or civil *in rem* action before this Court, and any person who has a question as to this action should contact:

United States Attorney for the Western District of North Carolina
Attn: Thomas R. Ascik, Assistant United States Attorney
100 Otis Street
Asheville, North Carolina
(828) 271-4661

This the 10th day of August, 2006



DENNIS L. HOWELL

UNITED STATES MAGISTRATE JUDGE

TO THE RECORDER OF THIS INSTRUMENT: MAIL ANY AND ALL RECORDED COPIES TO THE UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF NORTH CAROLINA AT THE ABOVE ADDRESS.

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U.S. DISTRICT COURT
W. DIST. OF N. C.

WESTERN DISTRICT OF NORTH CAROLINA

ASHEVILLE, NORTH CAROLINA

AFFIDAVIT IN SUPPORT OF LIS PENDENS

1:06mc/63

The affiant, Cody E. Muse, Task Force Agent,
Federal Bureau of Investigation, being duly sworn, states the
following:

I am a Task Force Agent of the Federal Bureau of
Investigation (FBI), Charlotte Division, Asheville, North
Carolina Resident Agency. This affiant has been assigned as a
Task Force Agent of the FBI for the last seventeen months.
Prior to assignment to the FBI, this affiant was assigned as
a Criminal Investigator with the Buncombe County Sheriff's
Department for six years and a Patrol Officer for almost six
years.

This affidavit is made to support a lis pendens for
a parcel of real property located at 130 High Rock Acres
Drive, Black Mountain, North Carolina (herein referred to as
subject property). The subject property is located in
Buncombe County, North Carolina, and is recorded in Buncombe
County Deed Book 2881 page 0660, Plat Book 0053 page 0026,
PIN number 0628-00-14-7646. The affiant believes that there
is probable cause to believe that the subject property was
used to facilitate the manufacture, sale, possession,
distribution, and concealment of a controlled substance and
is therefore subject to seizure and forfeiture to the United
States Government.

1 On May 18, 2006, this affiant received a report
2 from Agent J.D. Thomas of the Metropolitan Enforcement Group
3 (MEG) concerning the subject property and the owner of that
4 property, Sean Hurley. Hurley was arrested by the MEG on May
5 12, 2006 for Trafficking In Marijuana by Possession,
6 Trafficking in Marijuana by Manufacture, and Maintaining a
7 Dwelling for the Manufacture, Sell, or Delivery of a
8 Controlled Substance, all felonies in the State of North
9 Carolina. These offenses are alleged to have occurred at the
10 subject property.

11 On May 12, 2006, Deputies from the Buncombe County
12 Sheriff's Department responded to a report of domestic
13 violence at the subject property. The alleged domestic
14 violence had occurred between Hurley and his girlfriend,
15 Michelle Nicole Dowdy, both of whom were living at 130 High
16 Rock Acres Drive. Hurley and Dowdy have two children
17 together, between the ages of 6 and 12, who were also living
18 at 130 High Rock Acres Drive. They have had a live-in
19 relationship at the subject property at 130 High Rock Acres
20 Drive. Prior to living at the subject property, Dowdy lived
21 at a residence in Virginia Beach, Virginia, that was owned by
22 Hurley.

23 The subject property at 130 High Rock Acres Drive
24 is listed in the land records of Buncombe County in the name
25 of Hurley.

26 Pursuant to the report of domestic violence, Hurley
27 was arrested by the Deputies for assaulting Dowdy. During the
28 investigation by the Deputies, Dowdy informed them that

1 Hurley had an ongoing marijuana growing operation in their
2 basement.

3 When deputies entered the subject property, they
4 perceived a strong odor of marijuana.

5 The Buncombe County Deputies notified the MEG of
6 the marijuana growing operation and Agents J.D. Thomas and
7 S.W. Fredrickson responded. The MEG Agents obtained a signed
8 consent to search the subject property from Dowdy and
9 subsequently located the marijuana growing operation in the
10 basement MEG Agents seized lighting equipment, approximately
11 35 to 40 marijuana plants, containers of processed marijuana,
12 a 2002 Ford Van, and \$4,080.10 in U.S. currency. The total
13 weight of marijuana seized was 9,454 grams.

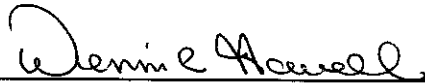
14 Hurley was charged by the MEG for the narcotics
15 violations. After Hurley's bond hearing, he made spontaneous
16 statements to the MEG Agents that the marijuana plants found
17 in his residence were his and for his use.

18 Based on these facts and circumstances, the affiant
19 believes that there is probable cause to believe that the
20 subject property has been used to facilitate the manufacture,
21 sale, possession, distribution, and concealment of a
22 controlled substance in violation of Title 21 U.S.C. § 801 and
23 specifically 21 U.S.C. § 841 (drug trafficking) and § 856
24 (maintaining a drug house) and is therefore subject to
25 seizure and forfeiture to the United States Government.



Cody E. Muse
Task Force Agent
Federal Bureau of Investigation

Sworn to before me and subscribed in my presence,
(date) August 10, 2006 at Asheville, North Carolina



Dennis L. Howell, United States Magistrate Judge